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No. 00-1091

Supreme Court, U.S.
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In the

Supreme Court of the United States

PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

vs.

EDWARD CARLSON,

Respondent.

On Petition for Writ of Certiorari to the Appellate Court of Illinois, First District

REPLY BRIEF FOR PETITIONER

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ARGUMENT

In its petition, the State of Illinois presented this Court with a cornucopia of reasons why the instant petition should be granted. The Respondent has not challenged the majority of those reasons. For example, the Respondent does not argue with the fact that the Illinois Appellate Court decided the present case under federal constitutional law. Nor does he disagree with the fact that the two issues posed by Petitioner are important and that they have been specifically left open by this Court. Further, Respondent does not dispute that the instant case is limited to the stop (seizure), and not the subsequent search, of Respondent or that this case is subject to *de novo* review by this Court. Finally, Respondent does not quarrel with Professor Wayne R. LaFave's statement in his treatise, nor does he question Petitioner's assertion that the ruling in *Rivera v. Florida*, 771 So.2d 1246 (2000), is erroneous. Rather, the Respondent posits only three reasons why this Court should not grant the present petition. However, each of theses reasons is meritless and should not deter this Court from directly addressing these important questions.

1. The first argument that Respondent presents against the granting of the instant petition is that the Illinois Appellate Court decided the present case correctly because the facts presented here are the same as those in *Florida v. J.L.*, 529 U.S. 266 (2000). As support for this argument the Respondent states that "[t]he officer's actions (in stopping Respondent) were based *solely* on the information he received in the dispatch that [Respondent] 'may' have a weapon on him or in his car" and that

the "Petitioner cites *no* (other) facts that distinguish the present matter from J.L. . . . .". (Op. Cert. pp. 1, 2) (emphasis added) In making these statements, the Respondent ignores the record. The evidence in the trial court unequivocally established that, in addition to the information about the gun, the police were told that Respondent was talking to his girlfriend from a public pay phone and "telling her he was thinking about . . . killing himself, committing suicide." (V2-12) In short, the combined information about the gun and suicide established that Respondent was a danger to himself and to the public at-large. It is this critical information from the caller, to which Respondent turns a blind eye, that distinguishes the present case from *Florida v. J.L.*. There can be no question that a possibly armed and suicidal person in a public place is the consummate "ticking time-bomb". It is the presence of this inherently dangerous situation, which is too great to ignore, that requires immediate police action even without a showing of reliability.

The Respondent goes on to assail the Petitioner by stating that "[t]he source of the alleged tip is not a matter of record. Petitioner misleads this Court when it suggests the identify of the anonymous tipster *was* established." (Op. Cert. p. 3) (emphasis added) This assertion is baseless and not well taken by Petitioner. At no time did the Petitioner state or suggest in the petition that the caller's identity *was* established. There was no need for the police to do so because the caller's information was true. The Petitioner simply stated in the petition that the nature of the information provided by the caller "greatly narrowed the likely class of callers" and that the police

"could have" discovered the caller's identity through an investigation if the information had been false. (Pet. p. 6-7) It is therefore clear that Respondent's initial argument is meritless and presents no reason why this Court should not grant the instant petition.

2. The second reason that Respondent puts forth, so as to prevent further review by this Court, is that the Petitioner has waived the *Terry* and "public safety" arguments by not presenting them below. *See Terry v. Ohio*, 392 U.S. 1 (1968). The Petitioner is at a loss to understand how the Respondent can seriously claim that these issues have been waived for review. First, in presenting his argument to the trial judge, counsel for Respondent stated that "I suggest that perhaps a *Terry* stop, an inquiry of Mr. Carlson, questioning without weapons drawn, without being in custody may have been appropriate." (V1-36) Second, the trial judge indeed ruled that the officer made a proper *Terry* stop because "[t]here were certainly reasonably articulable circumstances which raised the situation to at least a suspicion." (V1-37) Third, although the Petitioner did not mention *Terry* in the initial appellate court brief, the Petitioner later supplemented this brief with additional authority and analyzed the present issue as a temporary investigative stop pursuant to *Terry v. Ohio*. (Supp. C.L. 2-4) Fourth, pursuant to the Illinois Appellate Court's request, the Petitioner filed a supplemental argument and analyzed the propriety of the *Terry* stop in the present case in light of *Florida v. J.L.* (Supp. C.L. 16-24) Fifth, the Illinois Appellate Court's decision is based entirely on *Florida v. J.L.*, which in turn is grounded in *Terry*. Sixth, as

Respondent acknowledges, inherent in *Terry* are this Court's concerns for "public safety". (Op. Cert. p. 5) Finally, the trial judge's finding indicates that the officer was concerned about "public safety" because he acted out of concern for "the safety of the defendant and anyone else that may be in the area." (V1-37) Therefore, there can be no question that the *Terry* and public safety issues, which go hand-in-hand, have not been waived. Accordingly, this is no reason for this Court to deny review.

3. The Respondent's third and final attempt to preclude review by this Court is his assertion that the Petitioner ignores this Court's holding in *Florida v. J.L.* and ". . . persists in arguing that a general 'firearms exception' should be crafted which imposes no reliability testing because of the dangers of guns" and that "Petitioner provides no basis for this Court to reconsider and reverse its ruling in J.L.". (Op. Cert. pp. 2, 3) In making these assertions, Respondent either completely misunderstands, or chooses to ignore, the Petitioner's arguments. The Petitioner emphatically states that nowhere in the petition is it requested that this Court reconsider, much less reverse, its holding in *Florida v. J.L.* This Court has already decided the "firearms exception" question and the Petitioner has no quarrel with this Court's ruling. What the Petitioner is requesting is that this Court explore and flesh out two of the questions posed by this Court, which the factual matrix of *Florida v. J.L.*, did not present. Specifically, the issues concerning the "danger" and "narrowing the class of likely informants" that were raised by this Court.

In sum, the Respondent has presented no real reasons for this Court to decline review of the important issues posed by the instant petition. Additionally, the Petitioner points out that, not only are the issues presented here important, but they are timely. For example, had a similar anonymous telephone tip been made to the Washington D.C. police about a possibly armed and suicidal person outside the White House, then the police, according to the Illinois Appellate Court, would have been powerless to conduct a temporary investigative stop of that person prior to him pulling out his gun and shooting. Petitioner submits that this is untenable and that the present case presents this Court with the perfect vehicle to address and rectify this situation. Accordingly, the Petitioner respectfully urges this Court to accept the instant petition.

CONCLUSION

The Petition for a writ of certiorari should be granted.

Respectfully submitted,

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